

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment ARM)	NOTICE OF PUBLIC HEARING
37.70.401, 37.70.402, 37.70.406,)	ON PROPOSED AMENDMENT
37.70.408, 37.70.601, 37.70.602,)	
37.70.607, and 37.71.602 pertaining to)	
Low Income Energy Assistance)	
Program (LIEAP) and Low Income)	
Weatherization Assistance Program)	
(LIWAP))	

TO: All Interested Persons

1. On October 24, 2007, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Conference Room, of the Department of Public Health and Human Services Building, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on October 12, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.70.401 DEFINITIONS (1) "Annual gross income" means all nonexcluded income including but not limited to wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, workers' compensation, unemployment compensation, social security retirement and disability payments, supplemental security income payments, veterans administration payments, cash public assistance benefits such as temporary assistance for needy families or tribal, state, or county general relief, and capital gains received by the members of the household in the 12 months immediately preceding the month of application.

(a) through (14) remain the same.

(15) "Nonrecurring lump sum payment" means a single, one time sum of money paid at one time rather than in two or more separate payments.

(15) through (23) remain the same but are renumbered (16) through (24).

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.402 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS (1) through (4) remain the same.

(5) Households that are eligible for or that have received LIEAP benefits through an Indian tribal program funded by the U.S. Department of Health and Human Services may not receive LIEAP benefits from the department for the same heating season, unless the household changes residence during the heating season and the household is no longer eligible for tribal LIEAP benefits; in that case, the household may apply for a prorated LIEAP benefit based on the household's new circumstances as provided in ARM 37.70.602. Additionally, any individual who was a member of a household that received LIEAP benefits through an Indian tribal program funded by the U.S. Department of Health and Human Services may not receive LIEAP benefits from the department for the same heating season unless the individual leaves the household that received tribal LIEAP benefits during the heating season and is no longer eligible for tribal LIEAP benefits; in that case the individual may apply for a prorated LIEAP benefit from the department for the same heating season based on the circumstances of the individual's new household as provided in ARM 37.70.602.

~~(5) Households deemed to be within the service population of an Indian tribe which received direct funding from the department to run its own program shall not be eligible for further LIEAP benefits from the state within the current heating season.~~

(6) and (7) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with annual gross income at or below 150% of the ~~2006~~ 2007 U.S. Department of Health and Human Services poverty guidelines are eligible for low income energy assistance on the basis of income. Households with an annual gross income above 150% of the ~~2006~~ 2007 poverty guidelines are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) The table of income standards for households of various sizes for the ~~2006~~ 2007 heating season may be accessed at the department's web site at www.dphhs.mt.gov, or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) In state fiscal year ~~2006~~ 2008, a household will be eligible if its total countable nonbusiness resources do not exceed ~~\$9,105~~ \$9,378 for a single person, ~~\$13,664~~ \$14,071 for two persons, and an amount equal to ~~\$13,664~~ \$14,071 plus

~~\$911~~ \$938 for each additional household member, up to a maximum of ~~\$18,213~~ \$18,759 per household. In addition, the household may have business assets whose equity value does not exceed \$12,500.

(5) through (5)(b) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 382	\$ 417	\$ 549	\$ 710	\$ 297	\$ 169
TWO	555	606	798	1,032	432	246
THREE	756	825	1,087	1,406	588	335
FOUR	1,040	1,135	1,495	1,934	809	461

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	<u>\$ 359</u>	<u>\$ 438</u>	<u>\$ 549</u>	<u>\$ 676</u>	<u>\$ 367</u>	<u>\$ 184</u>
TWO	<u>522</u>	<u>637</u>	<u>798</u>	<u>982</u>	<u>533</u>	<u>268</u>
THREE	<u>712</u>	<u>868</u>	<u>1,087</u>	<u>1,339</u>	<u>726</u>	<u>365</u>
FOUR	<u>979</u>	<u>1,194</u>	<u>1,496</u>	<u>1,842</u>	<u>999</u>	<u>502</u>

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 323	\$ 352	\$ 464	\$ 754	\$ 251	\$ 143
TWO	486	530	699	1,136	378	215
THREE	714	778	1,025	1,667	554	316

FOUR	834	909	1,198	1,947	647	369
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# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 304	\$ 371	\$ 464	\$ 718	\$ 310	\$ 156
TWO	458	558	699	1,082	466	234
THREE	672	819	1,026	1,587	684	344
FOUR	785	957	1,199	1,854	799	402

(iii) MOBILE HOME

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 322	\$ 351	\$ 462	\$ 627	\$ 250	\$ 143
TWO	470	513	676	917	366	208
THREE	624	680	896	1,215	485	276
FOUR	696	759	1,000	1,356	541	308

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 303	\$ 369	\$ 463	\$ 597	\$ 309	\$ 155
TWO	443	540	676	873	452	227
THREE	587	716	897	1,157	599	301
FOUR	655	799	1,001	1,291	668	336

(d) remains the same.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.70.602 BENEFIT AWARDS: MISCELLANEOUS (1) and (2) remain the same.

(3) When a household changes residence or type of primary fuel during the heating season, the household may request to have its benefit award recomputed for the new circumstances. ~~When the household changes residence, a new application must be filed. The benefit award for the new circumstances must file a new application. The household's benefit award will then be recomputed based on its new circumstances, and the new benefit will be equal to the benefit award the household would have received had its original application been for the new circumstances prorated from the date of the change of residence or type of primary fuel. The Any unused portion of the original benefit award reverts to the department.~~ When a household changes type of primary heating fuel during the heating season, the household is not required to file a new application but must have its benefit award recomputed based on the new type of fuel. The new benefit will be prorated

from the date of the change of type of fuel. Any unused portion of the original benefit reverts to the department.

(4) remains the same.

(5) When a household changes primary fuel vendors any remaining LIEAP attributable credit balance will be returned to the department by the original fuel vendor. The unused portion of the benefit award may be forwarded to the new fuel vendor or reimbursed to the household as outlined in ARM 37.70.607.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) through (4)(c) remain the same.

(5) If an otherwise eligible household resides in publicly subsidized housing, is responsible for its heating costs, and receives a utility subsidy from the subsidized housing agency to defray heating energy costs, either as a payment directly to the household or as a payment to the household's primary fuel vendor, the household's eligibility for a LIEAP benefit shall be computed as follows:

(a) The household's benefit computed in accordance with ARM 37.70.601 shall be divided by the number of months in the heating season to determine the household's monthly LIEAP benefit. The amount of the household's monthly utility subsidy shall then be subtracted from the monthly LIEAP benefit.

(i) If the figure obtained when the monthly utility subsidy is subtracted from the monthly LIEAP benefit is greater than \$0, the household is eligible for a monthly LIEAP benefit in that amount.

(ii) If the figure obtained when the monthly utility subsidy is subtracted from the monthly LIEAP benefit is less than \$0, the household is not eligible for a LIEAP benefit.

(b) If the household is eligible for a LIEAP benefit as determined in accordance with (5)(a), a total benefit calculated by multiplying the monthly LIEAP benefit by the number of months in the heating season will be paid to the household's primary fuel vendor.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.71.602 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE (1) Weatherization assistance will be made to eligible households in accordance with the state standard of prioritized measures for sample dwellings as established in ~~(3)~~ (4).

(2) Dwellings chosen to be weatherized shall receive those measures determined to be cost effective as defined in 10 CFR, part 440, as amended through February 1, 2002. The department hereby adopts and incorporates by reference 10 CFR, part 440, as amended through February 1, 2002. A copy of these federal regulations may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925.

(3) The designated local contractor may reorder a standard for any of the following reasons:

(a) A local contractor completes the department approved energy audit and the audit reveals the cost-benefit ratio would be higher by reordering the standards as prioritized in ~~(3)~~ (4) below. It must be noted in the client file that the reordering is the most appropriate cost-effective measure in this case and signed off by the weatherization coordinator.

(b) and (4) remain the same.

AUTH: 53-2-201, 90-4-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

4. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. The department's administrative rules governing LIEAP are at ARM 37.70.101, et seq. ARM 37.70.401 defines terms used in the LIEAP rules. Section (1), which defines "annual gross income," contains a list of types of income, such as wages, salaries, and commissions but specifically states that the list of types of income is not all inclusive. Nevertheless, in the past the department was involved in litigation in which a LIEAP applicant asserted that his Social Security retirement benefits should not be counted as income because the rule did not mention Social Security retirement benefits at that time. In the interest of avoiding future litigation, the department recently amended the definition of gross annual income to add other types of income to the list, such as Social Security retirement and disability benefits and public assistance benefits like Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF) payments.

The department inadvertently failed to list Veterans Administration (VA) payments in section (1) at that time, however. Applicants for LIEAP benefits who receive Veterans Administration payments such as pensions or disability payments occasionally ask what the legal basis is for counting their VA payments as income. The department is therefore adding this to the list of payments which constitute income for LIEAP purposes so that LIEAP clients can see that VA payments must be counted as income. This does not represent a change in policy as the department has always considered these payments to be income.

A definition of the term "nonrecurring lump sum payment," which is used in ARM 37.70.407, is also being added to ARM 37.70.401. ARM 37.70.407(1)(x) provides that in some cases nonrecurring lump sum payments are not counted as income. Although the department had assumed it was self-evident that only a one-time payment can be considered a nonrecurring lump sum payment, LIEAP applicants have from time to time contended that a payment which is made in more than one installment should be considered an excludable nonrecurring lump sum payment. It is therefore necessary to define the term in order to avoid disputes on this issue. This amendment merely clarifies and does not change the department's policy on lump sum payments.

ARM 37.70.402 specifies certain situations where households are automatically eligible for LIEAP and also specifies circumstances under which an otherwise eligible household is not eligible for LIEAP benefits. ARM 37.70.402(5) currently provides that households that are eligible for LIEAP benefits through an Indian tribal program funded directly by the department may not receive LIEAP benefits from the department for the same heating season. The purpose of this provision is to prevent households from receiving double benefits by applying to both LIEAP programs. The department now proposes to provide in addition that a person who was a member of a household that received benefits from a tribal LIEAP program cannot receive LIEAP benefits from the department for the same season. This provision is necessary to ensure that if the person who was eligible for and received tribal LIEAP benefits leaves the household during the heating season, the remaining members of the household, who may not be eligible for tribal LIEAP, are not entitled to LIEAP benefits from the department, which again would result in duplicate benefits.

The department proposes to provide exceptions to the general rule prohibiting receipt of benefits from both a tribal and the department's program in the case of households or individuals who move during the heating season. ARM 37.70.602(3) provides that when a household moves during the heating season, the household may receive a benefit based on its new circumstances prorated from the date of the change. ARM 37.70.602 further provides that in such a case the unused portion of the original benefit reverts to the department, so the household does not get double benefits. Similarly, if a household that received tribal LIEAP benefits moves during the heating season and is no longer eligible for tribal benefits, there is no reason why the household should not receive a prorated LIEAP benefit from the department, because this will not result in duplicate benefits. Likewise, if the person who lived in a household that received tribal benefits moves out of the household during the heating season, that person should be allowed to receive a prorated benefit because this will not result in duplicate benefits. Without a provision allowing a person who moves out of a household that already received tribal benefits to get a prorated benefit from the department, victims of domestic violence or other persons who move during the heating season for circumstances beyond their control will not be able to get help to pay their heating costs for their new home.

The maximum income standards used to determine whether a household is eligible for LIEAP benefits are contained in ARM 37.70.406. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services (HHS). The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2006.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. It has been the long standing practice of the department to amend ARM 37.70.406 annually to provide that the updated version of the poverty guidelines will be used to set the income standards and benefit amounts for the current heating season. The department uses the updated version of the guidelines because they are higher than the guidelines for the previous year. If the department

did not use the updated guidelines, some households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power. Thus, ARM 37.70.406 is now being amended to provide that the 2007 rather than the 2006 poverty guidelines will be used for the 2006-2007 heating season.

In determining eligibility for LIEAP, the department considers not only income but also what assets (known as "resources") the household has that can be used to pay heating costs. ARM 37.70.408 specifies the rules relating to resources. Section (4) currently specifies the maximum amount of nonbusiness resources that households of varying sizes can have and still qualify for LIEAP in state fiscal year 2007. Since section (5) states that the dollar limits on nonbusiness resources will be revised annually to adjust for inflation, it is necessary to amend section (4) to increase the dollar amounts for fiscal year 2008, that is, the year that runs from July 1, 2007 through June 30, 2008. Section (5) provides that the revised nonbusiness resource limits shall be computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The CPI for 2006 was 3.2%, so the department is increasing the dollar amounts in section (4) by 3%.

ARM 37.70.601 contains tables of benefit amounts which are used to establish the amount of benefits an eligible household will receive. As previously discussed, the amount of the household's benefit depends on multiple factors, including income level, type of primary heating fuel, the type of dwelling and number of bedrooms, and the heating district in which the household is located.

The benefit amounts in the table are also revised annually to take into account the amount of funds available to pay LIEAP benefits for the current heating season, as well as fuel cost projections and an estimate of the number of households that will apply and be found eligible for LIEAP for the heating season.

The department estimates that Montana's federal LIEAP appropriation for the 2007-2008 heating season will be \$11,842,000. In addition to the federal appropriation, there are also \$446,842 of funds carried over from 2006-2007 available to pay LIEAP benefits in 2007-2008. Thus, benefits for 2007-2008 are calculated based on total funding of \$12,289,462. This compares to total funding of \$13,660,738 for 2006-2007, which included federal appropriations of \$13,248,143 (including \$1,709,512 carried over from the 2005-2006 program year) and \$412,595 in state funds appropriated for LIEAP by the Montana Legislature in House Bill 2. Total LIEAP funding for 2007-2008 is therefore estimated to be \$1,371,276 less than funding for 2006-2007.

The department estimates that 20,006 households will qualify for LIEAP benefits for the current heating season, which would be a 5% increase over the number of households that received LIEAP last year. Since the total funds available to pay benefits are less than last year, and the estimated number of eligible households is greater, benefits will be smaller for the 2007-2008 heating season than in the

previous year. It is estimated that the average household will receive a LIEAP benefit for the current heating season which is \$11 less than last year's benefit.

As discussed above in connection with the amendment of ARM 37.70.402, ARM 37.70.602 provides that when a household changes residence or type of primary heating fuel during the heating season the household may request to have its benefits recomputed based on its new circumstances. The benefit will be prorated from the date of the change in circumstances, and the rule requires that any unused portion of the original LIEAP benefit be repaid to the department. The rule provides that when a household changes its residence the household must file a new application. This is necessary because a household's benefits are based on a number of factors as specified in ARM 37.70.601, which may change when the family moves, such as the type of home (single family, multi family or mobile home), type of heating fuel used, the family's income level, and the part of the state in which the home is located. Thus, for the department to accurately determine the new benefit amount based on the household's new circumstances, it must have a new application which provides detailed information about the household's new circumstances.

ARM 37.70.602 currently does not state whether a household that changes its type of heating fuel must file a new application. Language is being added to specifically state that in such a case the household does not have to file a new application. This is being added merely for clarification and does not indicate a change in policy. There is no reason for the household to fill out a new application with detailed information about who lives in the household, what income and resources they have and so on in a case where the only change is the type of fuel used to heat the home.

A provision is also being added to ARM 37.70.602 to specify that when a household does not move its residence but changes fuel vendors any credit balance will be returned to the department by the original fuel vendor. It further provides that the unused portion of the benefit may be sent to the new fuel vendor or reimbursed to the household as provided in ARM 37.70.602. This policy regarding for the treatment of credit balances is mandated by federal regulations governing LIEAP and is not a new policy. It is being stated in the rule at this time so that the public will be aware of the policy.

The department proposes to add a new section, section (5), to ARM 37.70.607 in regard to the method for calculating the benefits of households that reside in publicly subsidized housing. Residents of publicly subsidized housing are eligible for LIEAP benefits if they are responsible for paying their own heating costs. In some cases they receive a utility subsidy from the public housing authority to help them pay their energy costs. The rule currently does not provide that the LIEAP benefit paid to residents of subsidized housing who get a utility subsidy should be computed taking into consideration the fact that they are receiving assistance with their heating costs from another source. A provision is therefore being added to state that LIEAP benefits for these households will be computed in accordance with the usual method for computing benefits in ARM 37.70.601, but the amount of the utility subsidy will be

deducted to determine whether they will receive a LIEAP benefit, and, if so, what the amount of the benefit will be. The provision provides that benefits for these households will be computed on a monthly basis because the utility subsidy is a monthly payment. This provision is necessary to prevent duplication of benefits; without this provision households in subsidized housing receiving a utility subsidy would be getting payments from two separate sources to pay their utility costs. This would be unfair to other LIEAP households that receive energy assistance only from LIEAP.

The Low Income Weatherization Assistance Program (LIWAP) is a federally funded program to help low income households reduce their energy bills by providing services such as the installation of insulation that make their homes more energy efficient. The rules governing LIWAP are in ARM 37.71.101, et seq.. ARM 37.71.602 contains standards for determining what weatherization measures will be given the highest priority when homes are receiving weatherization services. ARM 37.71.602 is now being amended to correct an error which has come to the department's attention. Section (1) provides that weatherization assistance will be made available to eligible households in accordance with the state standard of prioritized measures established in section (3). Subsection (3)(a) also refers to standards as prioritized in section (3). In both cases, the reference should be to section (4), rather than (3), as section (4) contains the standard of prioritized measures for weatherizing eligible homes.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on November 1, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Barbara Hoffmann
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State September 24, 2007.